



#4.

**DEPARTMENT OF PLANNING
STAFF REPORT**

BOARD OF SUPERVISORS PUBLIC HEARING

Date of Meeting: September 11, 2007

SUBJECT: CPAM 2005-0004, Eminent Domain and Protection of Existing Communities

ELECTION DISTRICT: Countywide

**DECISION DEADLINE: 90 days from Planning Commission Action,
(Anticipated decision by Planning Commission on
September 10, 2007)**

RECOMMENDATIONS:

Planning Commission: The Planning Commission has scheduled a final Worksession on September 10, 2007, for the purpose of certifying their recommendations on CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, as detailed in Attachment 1.

Staff: Staff recommends the Board forward the CPAM to Committee of the Whole for further discussion of the Board of Supervisors-proposed language and the Planning Commission recommendations.

EXECUTIVE SUMMARY

On March 20, 2007 the Board of Supervisors voted 8-1 (Burton – no) to forward CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, to the Planning Commission for a public hearing no later than May 2007. The CPAM had been initiated by the Board on July 19, 2005 in response to the Supreme Court case *Kelo v. City of New London, CT*. Due to other CPAM priorities, the CPAM remained inactive. By the Board's action on March 20, the CPAM was moved to active status.

The Planning Commission began their work on the Board-recommended language in April 2007. The Commission held a public input session on April 16, a Public Hearing on May 21, 2007, and several subsequent worksessions. The Commission is expected to certify their recommendations at a September 10 Worksession and to forward the CPAM to the Board at that time to allow the Board a full 90 days for review of the CPAM.

The Commission-proposed language includes the following (Attachment 1, red text):

- Exercise the power of eminent domain only as described by State Code;
- Provide for the development of one or more town centers only in Suburban communities west of Route 28;
- Determine the location of Town Centers either through a community planning process or during the consideration of a land development proposal that includes a community outreach and input process;

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- Eliminate the provision that Town Centers serve as downtowns for their respective Suburban Policy Area communities; and
- Add definitions for redevelopment and revitalization.

DRAFT MOTIONS

1. I move that the Board of Supervisors forward CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, to Committee of the Whole for further discussion.

Or

2. I move that the Board of Supervisors forward CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, to Transportation/Land Use Committee for further discussion.

Or

3. I move that the Board of Supervisors forward CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, to the Board _____ Business Meeting for action.

Or

4. I move an alternate motion.

BACKGROUND

The proposed amendment is the result of Board discussions regarding the recent United States Supreme Court ruling issued in the case of *Kelo v. New London, CT*. The Court ruling refines the concept of public use to allow local governments the power to take private property and transfer it to another private interest for the purposes of economic development benefiting the community as a whole. The Board expressed its concern for the ruling and through draft language in the CPAM, specifically wished to state its intent to not use the power of eminent domain for economic development purposes.

The amendment as proposed by the Board included three areas of changes to the Revised General Plan (Plan): 1) add policy language that opposes the use of eminent domain for economic development purposes Countywide; 2) remove language that allows redevelopment in established communities in the Suburban Policy area (Ashburn, Dulles, Potomac, and Sterling), and; 3) remove language that calls for the development of Town Centers in each of the four communities of the Suburban Policy Area, and more specifically, east of Route 28 (Potomac and Sterling) (Attachment 1, blue text). The language, as originally proposed by the Board of Supervisors, would amend policies in Chapter 2, Planning Approach; Chapter 4, Economic Development; Chapter 6, Suburban Policy Area; Chapter 11, Implementation; and the Glossary of the Plan.

The Planning Commission began their work on the Board-recommended language in April 2007. A public input session was held on April 16 and a Planning Commission Public Hearing was held on May 21, 2007. At the Public Hearing the Commission voted (9-0) to send the proposed policies to three subcommittees, one for each component of the CPAM. The Redevelopment/Revitalization subcommittee, chaired by Commissioner Volpe, and the Eminent Domain subcommittee, chaired by Commissioner Elgin, were held on June 12. The Town Center subcommittee, chaired by Commissioner Klancher, was held on June 20. The subcommittees' recommendations were brought to the full Commission for consideration at July 9 and July 23 Worksessions. At these Worksessions, the Commission as a whole considered the subcommittee changes and made some additional policy and definition refinements. The Commission will finalize their review at a September 10 Worksession and certify their recommendation on the CPAM to the Board for its Public Hearing on September 11.

The Commission-proposed language includes the following (Attachment 1, red text):

- Exercise the power of eminent domain only as described by State Code;
- Provide for the development of one or more town centers only in Suburban communities west of Route 28;
- Determine the location of Town Centers either through a community planning process or during the consideration of a land development proposal that includes a community outreach and input process;
- Eliminate the provision that Town Centers serve as downtowns for their respective Suburban Policy Area communities; and
- Add definitions for redevelopment and revitalization.

SCOPE OF ACTIVITIES

Public Input Session

A public input session was held on April 16 before the regularly scheduled Planning Commission Public Hearing. Three members of the public spoke. Concerns were raised regarding the unintended consequences of the proposed language in the Plan. One idea was raised to develop community plans instead of eliminating language related to the development of town centers east of Route 28. Two members of the public stated they support the proposed CPAM language. One member of the public suggested that a community meeting be held with Supervisor Staton.

One email comment was received from the public, expressing concern that the insertion of language into the Plan placing limits on how eminent domain is used could have unintended consequences of invalidating future standard proffer language used in non-residential rezonings. This email was provided to the Planning Commission at the April 16 public input session.

Also, the Housing Advisory Board (HAB), in a memo to the Commission dated April 30, 2007 (Attachment 2), explained concerns that the proposed policies could preclude the future development of workforce housing related to town centers and transit oriented development. The HAB offered to provide the Planning Commission with additional input into the policies if needed.

Planning Commission Worksessions & Public Hearing

A Planning Commission Public Hearing was held on May 21, 2007. Nine members of the public spoke at the Hearing. Four stated that they supported the proposed CPAM language and five stated that they opposed the language. The Commission voted to send the proposed policies to three subcommittees, one for each component of the CPAM. The subcommittees' recommendations were brought to the full Commission for consideration at a July 9 Worksession, at which time the Commission made some policy language and definition changes. The Commission continued their review at a July 23 Worksession, where they specifically discussed eminent domain policies. The Commission is expected to certify their recommendations at a September 10 Worksession and to forward the CPAM to the Board at that time to allow the Board a full 90 days for review of the CPAM.

STAFF ANALYSIS

Eminent Domain/Economic Development

Eminent domain has not been envisioned or employed as a tool for economic development purposes in Loudoun County (Attachment 3: Economic Development Referral). Further, the Revised General Plan (Plan) is silent on the use of eminent domain as a policy implementation strategy. This silence allows policymakers the flexibility to implement County goals as they deem appropriate. State Code, on the other hand, contains specific guidance on the purpose and use of eminent domain, to include what constitutes a public use and a public facility. As such, given the inherent flexibility of the planning approach specified in the Revised General Plan and given that the State Code describes the limitations on the use of eminent domain, staff believes that adding the proposed plan language is not necessary. If the Board decides to include some form of eminent domain language in the Plan, however, staff would recommend the Planning Commission's suggested language, which references State Code. Alternatively, should the Board wish to include policy language to address the specific instances in which eminent domain

could be used, staff would recommend outlining the use of eminent domain solely for public infrastructure needs, including roads, schools, and utilities, as it has been historically used in the County.

Redevelopment/ Revitalization

The Plan speaks to the completion of Community Plans, a specific planning process that provides the four Suburban Communities the opportunity to determine how their community will develop within the parameters of overall County goals and community-identified needs and desires. Such a process allows for consideration of such items as uses, densities, design, infrastructure, and capital facilities and allows the community to examine the continuum of choices for change and to examine the strategies for addressing changes when the community determines that change is necessary.

To ensure that neighborhoods/communities maintain their current scale and density, the proposed CPAM amends several policies in Chapters 2 and 6 to remove the references to redevelopment while retaining revitalization policies and amending other policies that generally state that “established communities” or “established neighborhoods” will be preserved through revitalization plans. Staff is concerned that removing the word “redevelopment” from the Plan may limit community choices, preclude various desired changes, and preempt the Community Plan process.

Staff recommends the retention of redevelopment as a community option and supports the addition of definitions as specified by the Planning Commission for “Redevelopment” and “Revitalization,” as they help strengthen and clarify the existing Plan policies.

Town Centers

Plan language calls for Town Centers/Downtowns in each of the four Suburban communities of the Suburban Policy area (Ashburn, Dulles, Potomac, and Sterling). The Plan defines a Town Center as a “mixed-use concentrated community core, which will serve as a downtown for each of the four suburban communities, which comprise multiple neighborhoods. A town center will emphasize pedestrian movement over vehicular movement to create a pedestrian-friendly environment, with a full complement of services and amenities” (*Revised General Plan*, Glossary definition, p. G-11). Currently there are several approved and proposed developments called town centers located in the Suburban Policy Area (Lansdowne, Brambleton, Arcola-proposed, and Kincora-proposed). These centers, however, generally serve a single, planned community and are not positioned to serve as a focal point for multiple neighborhoods or the entirety of one of the four Suburban Communities.

The proposed policy would remove language calling for Town Centers in the communities east of Route 28 (Potomac and Sterling). Further, and because the Planning Commission was concerned about the timeliness of the Community Plan process, west of Route 28, the location of Town Centers would be determined either through a community planning process or during the consideration of a land development proposal that includes a community outreach and input process. One or more town centers could be developed in each Suburban community west of Route 28.

These proposed changes could preempt communities both east and west of Route 28 from charting their desired paths and limit flexibility in the development review process. The Community Plan process was included in the Plan to provide the Suburban Communities with the flexibility to proactively determine a desired development outcome, up to and including, whether or not a Town Center is desired. Development proposals could then be evaluated against a Community Plan to determine whether these proposals suit the public purposes espoused in the Plan. As proposed, the policy language could have the effect of supplanting the Community Plan process with the development review process. For areas east of Route 28, Town Centers would no longer be an option.

Overall, the Plan envisions a larger Community Plan process prior to rezonings to ensure that the goals of the community as a whole are being served through the rezoning. Without a larger Community Plan process, individual developments could also face a lack of predictability regarding community desires with no unified vision for an area, including whether or not a Town Center is desired.

Another concern relates to the nature of a Town Center. As currently envisioned in the Plan, each Suburban community would have a Town Center/Downtown that would meet the needs of multiple communities/neighborhoods. Most development proposals to date are intended to serve single planned communities and not to provide the mix of uses needed to serve a larger area.

Staff recommends that the current Community Plan process envisioned by the Plan be retained to ensure that communities are involved in determining the number, location, and need for Town Centers/Downtowns in each Suburban Community.

IMPLEMENTATION

The proposed CPAM will be implemented during the review of applicant-initiated rezonings and through review of the County's annual Capital Improvement Program.

FISCAL IMPACT

No new local funding is required to draft the proposed policy change or to administer the proposed changes to the Revised General Plan.

RECOMMENDATION

In general, staff believes that the current limitations on eminent domain, as described in State Code, are sufficient. Additionally, recognizing that redevelopment does not necessarily mean a higher density, the elimination of the word "redevelopment" from the Plan may limit community choices, preclude various desired changes, and preempt the Community Plan process. With regard to the proposed revisions to the location and function of Town Centers, staff believes the Community Plan process, as called for in the Revised General Plan, is the best framework for determining how many, where, or whether Town Centers/Downtowns are developed. Staff supports the addition of definitions for redevelopment and revitalization, as proposed.

STAFF CONTACT: Joe Gorney, Department of Planning

ATTACHMENTS

1. Proposed policy language for CPAM 2005-0004, changes shown in color

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2. Memo to Planning Commission from Housing Advisory Board, April 30, 2007
3. Economic Development Referral, May 27, 2007

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PROPOSED POLICY LANGUAGE FOR CPAM 2005-0004:
Eminent Domain and Protection of Existing Communities
Changes to Chapters 2, 4, 6, 11, & Glossary of the Revised General Plan
Policies revised through July 23, 2007

Key:

- **Blue text:** Board of Supervisors proposed policies
- **Red text:** Planning Commission recommendations

(Strike-through is text to be deleted; double underlined is text to be added)

Amend 'General Plan Strategy' text pertaining to the Suburban Policy Area
(Revised General Plan, Chapter 2 pg. 2-6):

Over the next twenty years, it is anticipated that the Suburban Policy Area will continue to build out in a suburban pattern as a low-density fringe to the Washington, D.C. Metropolitan Region. The area will be characterized by a pattern of residential neighborhoods, town centers, and ~~regional business centers~~ mixed-use business centers linked by a substantial network of roads, linear parks, and open spaces. As existing neighborhoods mature, ~~redevelopment and~~ revitalization plans will be developed to ~~ensure the continuing vitality of these areas. protect and preserve these established communities.~~ ensure the continuing vitality of these established communities.

As express bus (expected in 2004) and eventually bus rapid transit (expected in 2010) and rail become available, higher-density land uses along major thoroughfares will become appropriate. Transit nodes and urban centers including a mix of uses and transportation modes will develop. Very compact in form, they will be designed for full pedestrian access and served by mass transit. The first nodes will appear along the Dulles Greenway corridor, where right-of-way exists for a rail transit corridor, and in in-fill areas within existing developments. ~~"Downtowns" in each of the four communities will be considered as part of the redevelopment strategy to be detailed in the Community Plan process.~~

Add new Policy 16 under 'Economic Development Policies' (Revised General Plan, Chapter 4 pg 4-10):

16. Loudoun County will ~~not exercise the power of eminent domain for economic development purposes.~~ exercise the power of eminent domain only as described by State Code.

Amend 'Land Use Pattern and Design' text (Revised General Plan, Chapter 6 pg. 6-2):

The County's vision for the Suburban Policy Area is that the four large communities increase in quality and become more distinct places. Policies below address ways to improve livability through (1) protecting and ~~recapturing~~ **enhancing** elements of the Green Infrastructure, including open space; (2) ensuring compatible and complementary infill development; and (3) revitalizing ~~and redeveloping the aging areas in the Suburban Policy Area.~~ existing neighborhoods in a way that protects and **preserves enhances our existing communities.**

Amend Policy 13 under 'Land Use Pattern and Design Policies' (Revised General Plan, Chapter 6, pg. 6-7):

13. There will be ~~four (4) Town Centers~~, one (1) Transit-Oriented Development (TOD), one (1) Transit-Related Employment Center (TREC), and one (1) Urban Center in the Suburban Policy Area. Town Centers ~~will~~ **may** be considered for development west of Route 28 in the Suburban Policy Area.

Amend 'A. Four Distinct Communities' text, bullet 2 (Revised General Plan, Chapter 6, pg. 6-8):

- ~~All communities will should seek to provide a full range of housing types, and provide for a diverse, stimulating social, cultural, recreational, and spiritual environment.~~ ~~Each eCommunityies west of Route 28 will~~ **may** have a recognized Town Center. ~~All communities will should seek to provide a full range of housing types, and provide for a diverse, stimulating social, cultural, recreational, and spiritual environment.~~

Delete 'E. Transportation' text, (Revised General Plan, Chapter 6, pg. 6-12):

With the advent of transit, it is important that the County plan land uses accordingly. ~~The County will identify future transit areas as Town Centers in each of the four communities during the Community Plan process. These areas may be targeted for redevelopment to facilitate transit, such as bus.~~ In addition, mixed-use communities ~~that~~ **should** provide pedestrian-scale environments ~~that~~ promote walking and bicycling, which reduces automobile trips.

Delete 'F. Infill, Revitalization, and Redevelopment' text (Revised General Plan, Chapter 6, pg. 6-15):

~~Although much of the Suburban Policy area has been developed, this area will continue to evolve. The County envisions redevelopment to concentrate density into four Town Centers within the four distinct communities. This type of redevelopment might be considered "vertical" development. As the second wave of development occurs, the County will encourage new growth into the compact Town Centers of the four communities. These downtown areas will be identified in the Community Plan process.~~

Amend Policy 2 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6, pg. 6-15):

2. Redevelopment of existing uses will be based on the availability of adequate public facilities, transportation facilities, and infrastructure. The County desires the assemblage of small, adjacent under-utilized sites to achieve a consistent and compatible development pattern. Established residential communities will be protected and ~~preserved~~ enhanced through revitalization plans.

Amend Policy 7 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6, pg. 6-15):

7. Higher density development as defined in the Revised General Plan will occur as redevelopment in the Suburban Policy Area in the Transit-Oriented Development, Urban Center, and in the Town Centers, or "community cores," of the ~~four~~ communities west of Route 28. These areas will have the highest densities in the Suburban Policy Area. ~~The~~ Town Centers ~~will~~ should be identified ~~during the~~ through a Ccommunity Pplanning process.

Amend Policy 12 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6, pg. 6-16):

12. The County will provide incentives and resources for the ~~redevelopment and revitalization of developed areas established neighborhoods within the four communities~~ to ~~retrofit neighborhoods to be pedestrian/bicycle oriented; to institute traffic calming, street lighting, and sidewalks; preserve the quality of life in these areas; through the provision of to include such measures community amenities, such as, but not limited to, pedestrian/bicycle facilities, traffic calming, street lighting, sidewalks, and improving the quality of and to convert inefficient retail and commercial development establishments.~~

Add new Policy 14 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6 pg 6-16):

14. Loudoun County will ~~not exercise the power of eminent domain for economic development purposes.~~ exercise the power of eminent domain only as described by State Code.

Amend '3. Town Centers' text (Revised General Plan, Chapter 6, pg. 6-19):

The Plan ~~envisions~~ anticipates that ~~each of the four larger~~ communities west of Route 28 ~~will each may~~ have one or more Town Centers. ~~Town Centers that~~ serve as the "downtown" or community core of the ~~four suburban~~ communities. Town Centers must be compact and designed to accommodate pedestrian and vehicular traffic with a full complement of services and amenities.

Amend Policy 1 under 'Town Center Policies' (Revised General Plan, Chapter 6, pg. 6-19):

1. A Town Center functions as the "downtown" of ~~each~~ the local community with a mix of residential and business uses in a compact setting. ~~Each of the four~~ communities west of Route 28 ~~will may~~ have a Town Centers, ~~the location of which will be determined in the Community Plan process. The locations of Town Centers should be determined through the a Community Pplanning process or established during the consideration of a land development proposal that includes a community outreach and input process.~~

Amend 'B. Suburban Community Design Guidelines' text (Revised General Plan, Chapter 11, pg. 11-5):

This Plan strongly endorses the development of ~~four~~ distinctive communities. ~~For the communities west of Route 28, that t~~ This will may include ~~a mixed-use~~ town centers and other mixed-use developments surrounded by residential neighborhoods and areas of natural open space to promote a sense of community, foster a pedestrian-friendly environment, and lessen reliance on the automobile, ~~and respect Loudoun's historie growth pattern of small towns surrounded by farms and open space.~~

Amend '3. Town Centers' text (Revised General Plan, Chapter 11, pg. 11-10):

a. Function

~~Four Town Centers will serve as the downtown of each of the four Suburban Policy Area communities west of Route 28.~~ A Town Center should have a lively, robust ~~extrovert~~ character ~~suitable for~~ integrating employment, commercial, residential and public ~~activities~~ uses.

Amend the definition of Town Center (Revised General Plan, Glossary, pg. G-11):

Town Center: A mixed-use, concentrated community core, which integrates employment, commercial, residential, and public uses, ~~will serve as a downtown for each of the four sSuburban communities west of Route 28.~~ A town center will emphasize pedestrian movement over vehicular movement to create a pedestrian-friendly environment and will offer, ~~with~~ a full complement of services and amenities.

Definitions to be added to Glossary (Revised General Plan , Glossary, pg. G-11):

Redevelopment: A change in land use which would involve the removal and replacement, rehabilitation, or adaptive reuse of an existing structure or structures, or of land from which previous improvements have been removed. Redevelopment should be compatible with adjacent properties and occur with input and involvement from the community.

Revitalization: Re-establishing the economic and social vitality of an existing neighborhood or area through legislation, tax incentives, and other programs that maintain and enhance the existing development pattern and preserve the original building stock and historic character.

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Loudoun County, Virginia
Housing Advisory Board

April 30, 2007

Robert J. Klancher, Chairman
Loudoun County Planning Commission
1 Harrison Street SE, 3rd Floor
PO Box 7000
Leesburg, VA 20177-7000

Dear Bob,

On behalf of the Loudoun County Housing Advisory Board, I want to thank you for your outreach in relation to CPAM 2007-0001, Housing Policies. We look forward to working with the Planning Commission to move this update to the county's housing policies forward through the public input process.

On an unrelated matter, I wanted to let you know that the Housing Advisory Board received and reviewed CPAM 2005-0004, Eminent Domain and Protection of Existing Communities. Our review concluded that the changes proposed in this document could have implications for the future development of workforce housing, potentially affecting such favorable conditions as town centers with transit oriented development, etc. The proposed language appears to preclude such future possibilities. The Housing Advisory Board favors an approach which offers a positive vision for the future over one which appears to primarily eliminate possibilities.

As you may recall, the Housing Advisory Board was created by the Board of Supervisors in June 2005. Our purpose is to serve as a resource to the Supervisors on policies and programs that develop and sustain affordable workforce housing in the county. We recognize that CPAM 2005-0004 does not directly address this issue. Yet we believe the proposed changes could adversely affect our future ability to narrow the large gap between supply and demand of workforce housing for our teachers, first responders, and others who currently cannot afford to live where they work. We are certainly available to the Planning Commission for further input on this topic if that would be helpful.

Many thanks for your leadership on the Planning Commission. The Housing Advisory Board looks forward to continuing the productive working relationship we established with the Commission last summer, when work on updating the housing policies first got underway.

Sincerely,

Tamar Datan Johnston, Chairman
Loudoun County Housing Advisory Board

ATTACHMENT 2

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COUNTY OF LOUDOUN
Department of Economic Development

REFERRAL



DATE: May 27, 2007
TO: Melanie Wellman, Project Manager
FROM: Robyn Bailey, Economic Development *RB*
SUBJECT: CPAM 2005-0004, Eminent Domain and Protection of Existing Communities

Description

The Department of Economic Development offers the following comments related to the CPAM 2005-0004, Eminent Domain and Protection of Existing Communities.

Evaluation

The Department of Economic Development's core mission is to support the formation, expansion, retention, and location of appropriate industries and businesses in Loudoun and the region. Successful economic development increases the community's capacity to generate wealth; one result of this is a local government with the sustained fiscal strength necessary to develop a high quality community while keeping tax rates competitive.

The Department of Economic Development offers the following comments on the proposed policy changes related to the use of eminent domain and redevelopment of communities east of Route 28.

1. The use of eminent domain for economic development has not been considered or envisioned as a tool for the Department of Economic Development.
 2. The Department of Economic Development supports the current policy that encourages the community involvement related to policy changes.
 3. The Department of Economic Development supports revitalization of aging neighborhoods in order to keep them vibrant and viable. At times, redevelopment is necessary, such as the rebuilding and re-tenanting of Sterling Park retail (new Safeway). The Department of Economic Development suggests that the policy remain silent on redevelopment rather than eliminating this possibility. Eliminating the possibility of redevelopment may lead to unintended consequences and prevent the market from correcting itself when necessary, or deprive property owners of the opportunity to profit by serving the community better through commercial redevelopment.
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